

PENNZOIL UNITED, INC.

IBLA 72-85 Decided January 16, 1973

Appeal from decision of New Mexico State Office, holding oil and gas lease NM 8159-A to have automatically terminated for failure to pay rental on or before the anniversary date of the lease.

Reversed.

Oil and Gas Leases: Termination

An oil and gas lease will not be deemed to have automatically terminated under 30 U.S.C. § 188(b) for failure to pay rental on or before the anniversary date of the lease when the assignor of such lease paid the rental seven months in advance, but the Bureau erroneously returned payment to assignor without notifying the assignee of the refund, even though the assignee was record holder of the title.

APPEARANCES: Tevis Herd, Esq., of Stubbeman, McRae, Sealy, Laughlin and Browder, Midland, Texas.

OPINION BY MR. STUEBING

Pennzoil United, Inc. appeals from a decision of the New Mexico State Office dated August 17, 1971, holding that oil and gas lease NM 8159-A had automatically terminated April 1, 1971, in accordance with 30 U.S.C. § 188 (1970). The State Office so held because appellant had failed to pay the rental on or before the anniversary date of the lease as required by law.

Lease NM 8159 was issued effective April 1, 1960, and subsequently assigned to Union Oil Company of California. By virtue of a partial assignment by Union Oil Company of California to J. F. Younger dated June 23, 1970, lease NM 8159-A containing 39.95 acres was segregated. This assignment was approved by the Bureau of Land Management September 4, 1970, to be effective October 1, 1970. As a result of the partial assignment, both leases were extended through September 30, 1972. Rental for lease NM 8159 was paid through March 31, 1971. On September 2, 1970, Union Oil Company of California, in connection with the partial assignment to Younger, submitted an additional \$574.45 in order to pay rental through March 31, 1972.

The Bureau of Land Management informed Union Oil Company of California on September 4, 1970, that the \$574.45 rental payment was being refunded, as it was regarded as a double payment of the rental already paid for the period from April 1, 1970, through March 31, 1971. The Bureau gave no notice of this refund to Younger, although the Bureau had approved the assignment to Younger on the same day it had notified Union Oil Company of California of the refund. Union Oil Company of California received the refund on September 28, 1970, but gave no notice of this refund to Younger.

By assignment dated May 4, 1971, John F. Younger and his wife Charlene S. Younger, assigned title to lease NM 8159-A to Pennzoil United, Inc. The Bureau of Land Management approved this assignment.

On August 17, 1971, the New Mexico State Office rendered its decision holding that lease NM 8159-A had automatically terminated April 1, 1971, for failure to pay the rental on or before the anniversary date of the lease. The decision was served on appellant on August 19, 1971. Notice of appeal was filed with the Bureau of Land Management on September 17, 1971, and the statement of reasons was filed on October 14, 1971, with the Board of Land Appeals. Attached to the statement of reasons was a draft dated October 8, 1971, from Pennzoil Producing Company, a subsidiary of Pennzoil United, Inc., in the amount of \$20 and payable to the Bureau of Land Management as "delay rental" for lease NM 8159-A.

The Mineral Leasing Act, 30 U.S.C. § 188(b) provides for automatic termination of an oil or gas lease upon failure of the lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities.

We find that this provision is not applicable in the present case and that the State Office's decision holding that the lease had automatically terminated is therefore incorrect. The following facts support our conclusion:

First, Union Oil Company of California tendered the rental payment to the State Office on September 2, 1970, which was well before the anniversary date of the lease, April 1, 1971, thereby complying with the time requirement of the Act. The State Office, however, reached an erroneous conclusion as to the nature of the payment. Although the letter of transmittal specified that the money was to be allocated to the rental period through March 31, 1971, the Bureau treated the payment as a duplicate payment for the period through

March 31, 1970, and so stated in its transmittal of the refund. Allocating this payment to the wrong period was a mistake attributable to the Bureau.

Second, there is no prohibition in the law or regulations against paying the rental seven months in advance. This payment would have been physically in the State Office on the anniversary date of the lease as required by law had it not been for the Bureau's action of refunding the payment. Appellant cannot be held responsible for the fact that the Bureau returned the payment. H. E. Stuckenhoff, Clyde A. Breen, 67 I.D. 285 (1960).

Third, the State Office gave no notice of the refund to Younger even though it had approved the assignment from Union Oil of California to Younger and Younger was the official record holder of the lease.

Fourth, the State Office approved the assignment from the Youngers to the appellant on May 4, 1971, despite the fact that it subsequently held that the lease had terminated on April 1, 1971, and despite the fact that neither the Youngers nor the appellant had been notified that the rental payment had been returned by the Bureau. Appellant could not have been expected to submit payment when it had no knowledge that payment was due. H. E. Stuckenhoff, Clyde A. Breen, supra. Cf. Sarkeys, Inc., 1 IBLA 123, 77 I.D. 207 (1970). Upon receipt of the decision of August 17, appellant exercised due diligence in appealing the decision and enclosing the check for rental with its reasons in support of the appeal. Cf. Sarkeys, Inc., supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is reversed.

Edward W. Stuebing, Member

We concur:

Frederick Fishman, Member

Anne Poindexter Lewis, Member

